

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1239-WQ-E TCEQ ID: RN105359749 CASE NO.: 36275
RESPONDENT NAME: Y-D ENTERPRISES, LLC

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 8400 Block of Clifford in White Settlement, Tarrant County</p> <p>TYPE OF OPERATION: Construction site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 18, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Ms. Pam Campbell, Water Enforcement Section, MC 169, (512) 239-4493 TCEQ Regional Contact: Mr. Sid Slocum, DFW Regional Office, MC R-4, (817) 588-5901 Respondent: Mr. Dewayne Young, General Manager, Y-D Enterprises, LLC, P.O. Box 54758, Hurst, Texas 76054 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p> <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review </p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 28, 2008</p> <p>Date of NOE Relating to this Case: July 11, 2008</p> <p>Background Facts: The EDPRP was filed on January 9, 2009 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on January 12, 2009, as evidenced by the signature on the card. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>WQ: Failed to obtain authorization to discharge storm water associated with construction activity [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c)].</p>	<p>Total Assessed: \$3,150</p> <p>Total Deferred: \$0</p> <p> <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset </p> <p>Total Paid/Due to General Revenue: \$3,150</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Within 30 days:</p> <p>a. Develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"), post a signed and certified construction site notice at the Site, and provide a copy of the signed and certified construction site notice to the operator of any municipal separate storm sewer system receiving the discharge to comply with Texas Pollution Discharge Elimination System (TPDES") General Permit No. TXR150000; or</p> <p>b. Implement final stabilization procedures as required by TPDES General Permit No. TXR150000.</p> <p>2. Within 45 days, submit written certification of compliance, with these Ordering Provisions.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	14-Jul-2008	Screening	29-Jul-2008	EPA Due	
	PCW	16-Dec-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Y-D Enterprises, LLC
Reg. Ent. Ref. No.	RN105359749
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations		1
Enf./Case ID No.	36275	Order Type	1660	
Docket No.	2008-1239-WQ-E	Government/Non-Profit	No	
Media Program(s)	Water Quality	Enf. Coordinator	Pamela Campbell	
Multi-Media		EC's Team	Enforcement Team 1	
Admin. Penalty \$ Limit Minimum		\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$3,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5.0% Enhancement Subtotals 2, 3, & 7 **\$150**

Notes The Respondent has one NOV for same or similar violations.

Culpability No 0.0% Enhancement Subtotal 4 **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 **\$0**

Economic Benefit 0.0% Enhancement* Subtotal 6 **\$0**

Total EB Amounts \$160
Approx. Cost of Compliance \$2,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal **\$3,150**

OTHER FACTORS AS JUSTICE MAY REQUIRE

0.0%

Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$3,150**

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty **\$3,150**

DEFERRAL

0.0%

Reduction

Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral for non-expedited case.

PAYABLE PENALTY

\$3,150

Screening Date 29-Jul-2008

Docket No. 2008-1239-WQ-E

PCW

Respondent Y-D Enterprises, LLC

Policy Revision 2 (September 2002)

Case ID No. 36275

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105359749

Media [Statute] Water Quality

Enf. Coordinator Pamela Campbell

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The Respondent has one NOV for same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 29-Jul-2008		Docket No. 2008-1239-WQ-E		PCW																	
Respondent Y-D Enterprises, LLC		<i>Policy Revision 2 (September 2002)</i>																			
Case ID No. 36275		<i>PCW Revision June 12, 2008</i>																			
Reg. Ent. Reference No. RN105359749																					
Media [Statute] Water Quality																					
Enf. Coordinator Pamela Campbell																					
Violation Number 1																					
Rule Cite(s)		30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)																			
Violation Description		Failed to obtain authorization to discharge storm water associated with construction activity. Specifically, the Respondent began construction on the Site prior to preparing and implementing a Storm Water Pollution Prevention Plan and posting a construction site notice.																			
Base Penalty				\$10,000																	
>> Environmental, Property and Human Health Matrix																					
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 15%;">Release</th> <th colspan="3" style="text-align: center;">Harm</th> </tr> <tr> <th></th> <th style="width: 20%;">Major</th> <th style="width: 20%;">Moderate</th> <th style="width: 20%;">Minor</th> </tr> <tr> <td>Actual</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Potential</td> <td></td> <td></td> <td></td> </tr> </table>				Release	Harm				Major	Moderate	Minor	Actual				Potential				Percent <input type="text" value="0%"/>
	Release	Harm																			
		Major	Moderate	Minor																	
Actual																					
Potential																					
>> Programmatic Matrix																					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 15%;">Falsification</th> <th style="width: 20%;">Major</th> <th style="width: 20%;">Moderate</th> <th style="width: 20%;">Minor</th> </tr> <tr> <td></td> <td style="text-align: center;">x</td> <td></td> <td></td> </tr> </table>				Falsification	Major	Moderate	Minor		x			Percent <input type="text" value="10%"/>								
Falsification	Major	Moderate	Minor																		
	x																				
Matrix Notes	100% of the rule requirement was not meet.																				
Adjustment				\$9,000																	
				\$1,000																	
Violation Events																					
Number of Violation Events <input type="text" value="3"/>		Number of violation days <input type="text" value="61"/>																			
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$3,000"/>																		
	monthly	x																			
	quarterly	<input type="text"/>																			
	semiannual	<input type="text"/>																			
	annual	<input type="text"/>																			
	single event	<input type="text"/>																			
Three monthly events are recommended from the investigation date (May 28, 2008) to the screening date (July 29, 2008).																					
Good Faith Efforts to Comply		0.0% Reduction		\$0																	
		Before NOV NOV to EDPRP/Settlement Offer																			
Extraordinary		<input type="text"/>																			
Ordinary		<input type="text"/>																			
N/A		x	(mark with x)																		
Notes		The Respondent does not meet the good faith criteria for this violation.																			
Violation Subtotal				\$3,000																	
Economic Benefit (EB) for this violation		Statutory Limit Test																			
Estimated EB Amount <input type="text" value="\$160"/>		Violation Final Penalty Total		\$3,150																	
This violation Final Assessed Penalty (adjusted for limits)				\$3,150																	

Economic Benefit Worksheet

Respondent Y-D Enterprises, LLC

Case ID No. 36275

Reg. Ent. Reference No. RN105359749

Media Water Quality

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$2,000	9-Oct-2007	30-Nov-2008	1.15	\$8	\$153	\$160
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to implement a Storm Water Pollution Prevention Plan and prepare and post a site notice. The date required is the date of the initial investigation. The final date is the anticipated date of compliance.

Avoided Costs		ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)					
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$160

Compliance History

Customer/Respondent/Owner-Operator: CN603254848 Y-D ENTERPRISES LLC Classification: AVG Rating: 3.0
Regulated Entity: RN105359749 Y-D ENTERPRISES PARKVIEW Classification: AVG by Default
Site Rating: 3.01
VILLAS
ID Number(s):
Location: 8400 BLOCK OF CLIFFORD IN WHITE SETTLEMENT
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: July 17, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 16, 2003 to July 16, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Pamela Campbell Phone: 512 239-4493

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders; court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 07/11/2008 (683414)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 12/07/2007 (597435)
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Description: Failure to obtain authorization to discharge storm water associated with construction activity.
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
Y-D ENTERPRISES, LLC;
RN105359749**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-1239-WQ-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, and 40 CODE OF FEDERAL REGULATIONS ("C.F.R.") pt. 122, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Y-D Enterprises, LLC ("Y-D").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Y-D owns and operates a construction site located at the 8400 Block of Clifford in White Settlement, Tarrant County, Texas (the "Site").
2. Y-D has discharged waste into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
3. During an investigation conducted on May 28, 2008, a DFW Regional Office investigator documented that Y-D failed to obtain authorization to discharge storm water associated with construction activity. Specifically, Y-D began construction on the Site prior to preparing and implementing a Storm Water Pollution Prevention Plan ("SWPPP") and posting a construction site notice.
4. Y-D received notice of the violations on or about July 16, 2008.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Y-D Enterprises, LLC" (the "EDPRP") in the TCEQ Chief Clerk's office on January 9, 2009.
6. By letter dated January 9, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Y-D with notice of the EDPRP. According to the return receipt "green card," Y-D received notice of the EDPRP on January 12, 2009, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Y-D received notice of the EDPRP, provided by the Executive Director. Y-D failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Y-D is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, 40 CODE OF FEDERAL REGULATIONS ("C.F.R.") pt. 122 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Y-D failed to obtain authorization to discharge storm water associated with construction activity. Specifically, Y-D began construction on the Site prior to preparing and implementing a SWPPP and posting a construction site notice, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Y-D with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Y-D failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Y-D and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Y-D for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Y-D is assessed an administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00) for violations of the Texas Water Code and the rules of the TCEQ. The payment of this administrative penalty and Y-D's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Y-D Enterprises, LLC; Docket No. 2008-1239-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Within 30 days after the effective date of this Order, Y-D shall:
 - a. Develop and implement a SWPPP, post a signed and certified construction site notice at the Site, and provide a copy of the signed and certified construction site notice to the operator of any municipal separate storm sewer system receiving the discharge to comply with Texas Pollution Discharge Elimination System ("TPDES") General Permit No. TXR150000; or
 - b. Implement final stabilization procedures as required by TPDES General Permit No. TXR150000.

3. Within 45 days after the effective date of this Order, the City shall submit written certification of compliance with either Ordering Provision No. 2.a. or 2.b.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Sid Slocum, Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Y-D. Y-D is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
6. If Y-D fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or

other catastrophe, Y-D's failure to comply is not a violation of this Order. Y-D shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Y-D shall notify the Executive Director within seven days after Y-D becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Y-D shall be made in writing to the Executive Director. Extensions are not effective until Y-D receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Y-D if the Executive Director determines that Y-D has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF KARI L. GILBRETH

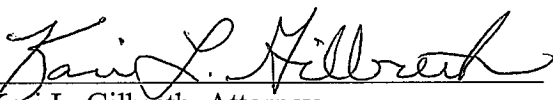
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Kari L. Gilbreth. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Y-D Enterprises, LLC" (the "EDPRP") was filed with the Office of the Chief Clerk on January 9, 2009.

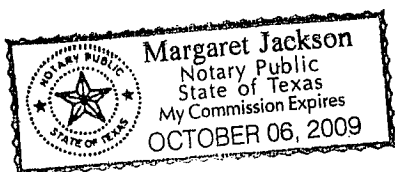
The EDPRP was mailed to Y-D at its last known address on January 9, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Y-D received notice of the EDPRP on January 12, 2009, as evidenced by the signature on the card.

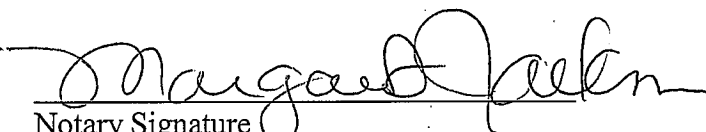
More than 20 days have elapsed since Y-D received notice of the EDPRP. Y-D failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."


Kari L. Gilbreth, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Kari L. Gilbreth, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 27th day of February, A.D., 2009.




Notary Signature